

October 12, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 12, 2005 (11:01am)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:

EXELON GENERATION COMPANY,
LLC and PSEG NUCLEAR, LLC

Docket Nos. 50-277
50-278

(Peach Bottom Atomic Power Station,
Units 2 and 3)

RESPONSE OF EXELON GENERATION COMPANY, LLC TO
SUPPLEMENTAL FILING OF ERIC JOSEPH EPSTEIN

On October 7, 2005, Eric Joseph Epstein made a supplemental filing on two dockets purportedly related to the requests by Exelon Generation Company, LLC ("Exelon Generation") for Nuclear Regulatory Commission ("NRC") consent to license transfers associated with the merger of Exelon Corporation and Public Service Enterprise Group Incorporated.¹ With respect to Mr. Epstein's filing as it may relate to Peach Bottom Atomic Power Station, Units 2 and 3 ("Peach Bottom"), the filing amounts to an untimely reply to the Answer filed by Exelon Generation on September 15, 2005.² Any reply should have been filed

¹ To the extent Mr. Epstein's filing is addressed to the Three Mile Island Nuclear Station, Unit 1 ("TMI"), the filing is irrelevant. As discussed in a letter to the Secretary from the undersigned counsel on behalf of AmerGen Energy Company, LLC (the licensee for TMI), dated August 24, 2005, there is no pending license transfer and no proceeding related to that station.

² "Answer of Exelon Generation Company, LLC to Request for Hearing of Eric Joseph Epstein," dated September 15, 2005 ("Answer").

within 7 days of the answer. *See* 10 C.F.R. § 2.309(h)(2). Accordingly, the supplemental filing should be stricken.

If the supplemental filing is considered to be anything other than an untimely reply (*e.g.*, a late-filed contention or basis for a contention), it includes no attempt to make the required showing. *See* 10 C.F.R. §§ 2.309(c) and 2.309(f). In any event, an opportunity for a response from Exelon Generation would be appropriate. In this regard, the supplemental filing makes two points — neither of which changes the conclusions in Exelon Generation's Answer of September 15, 2005.

First, Mr. Epstein, claims that precedent associated with the hearings on the TMI Unit 1 restart in the early 1980's supports a conclusion that standing may be granted — after initial licensing — to petitioners who reside approximately 50 miles from the station at issue.³ The precedent alluded to, however, is not applicable to the current situation. The TMI restart case did not involve a license transfer application. Moreover, while it may have been a hearing conducted after initial licensing, the hearing related to plant restart and full power operations, and is therefore directly analogous to the precedent on initial licensing. It is clearly distinguishable from the present situation and the precedent for license amendments and license transfers discussed in Exelon Generation's Answer, at pages 5-7.

Second, Mr. Epstein cites and supplies a copy of the differing professional opinion ("DPO") of an NRC Staff member related to emergency planning for day care facilities. Mr. Epstein claims that the DPO supports previously proposed Contentions 7 and 8. However,

³ Although the Board determined that the Aamodts did have standing to intervene in the restart proceeding, the Board did not provide a rationale for their decision in a published opinion. *See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, LBP-79-34, 10 NRC 828, 850 n.17 (1979) (noting only that the Aamodts were determined to have standing at a special prehearing conference).

for the reasons discussed in Exelon Generation's Answer, at pages 23-25, the two contentions remain inadmissible. The issues raised in the contentions and addressed in the DPO are beyond the scope of a license transfer application and staff review. These emergency preparedness issues, and the DPO itself, will be addressed in accordance with existing NRC regulatory procedures separate from the license transfer.

At bottom, the supplemental filing should be stricken as untimely. Moreover, the remedies requested by Mr. Epstein in that filing are inappropriate for this license transfer proceeding.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a long horizontal line extending to the right.

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Dated in Washington, District of Columbia
this 12th day of October 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF EXELON GENERATION COMPANY, LLC TO SUPPLEMENTAL FILING OF ERIC JOSEPH EPSTEIN" in the captioned proceeding have been served on the following by deposit in the United States mail, first class, this 12th day of October, 2005. Additional e-mail service, designated by *, has been made this same day, as shown below.

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